

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

		Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet)
Applicant's or agent's file reference see form PCT/ISA/220		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/T2004/000125	International filing date (day/month/year) 16.03.2004	Priority date (day/month/year)
International Patent Classification (IPC) or both national classification and IPC E01B29/24		
Applicant CEMBRE S.P.A.		

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:	Authorized Officer
 European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Fernandez, E Telephone No. +49 89 2399-2486
	

J. 3936

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/IT2004/000125

~~JAP20 Rec'd PCT/ITA 10 AUG 2006~~

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material:
 in written format
 in computer readable form
 - c. time of filing/furnishing:
 contained in the international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/IT2004/000125

Box No. II Priority

1. The following document has not been furnished:

- copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
 translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	3,4,6-25
	No: Claims	1,2,5
Inventive step (IS)	Yes: Claims	
	No: Claims	3,4,6-25
Industrial applicability (IA)	Yes: Claims	1-25
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)****Re Item V****Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1 Reference is made to the following documents:

D1 : US-A-5 586 502

D2 : US-A-5 839 377

2 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

2.1 Document D1 discloses (cf. figures 5 and 7) a device 10 for the application and for the removal of elements for the connection of a rail to a railway track sleeper, comprising:

- a) at least one lever 78 mounted on a frame so as to be able to rotate around an axis of rotation and equipped with at least one pressure organ 79 adapted to engaging the connecting element;
- b) at least one cylinder-piston group 82, 94 adapted to driving the lever 78 in order to assemble or disassemble the connecting element, said cylinder-piston group comprising a cylinder body 94 and a piston 82 slidably housed within the cylinder body and movable with respect to the cylinder body under the action of pressurised fluid,
- c) at least a first 83 and a second stop surface cooperating in such a way as to form a stop device for stopping the lever 78 in a defined position with respect to the frame,
- d) wherein said stop surfaces are formed, one of them on the piston and the other one on the cylinder body of said cylinder-piston group.

2.2 Document D2 also discloses (the references in parentheses applying to this document) a device 20 for the application and for the removal of elements for the connection of a rail to a railway track sleeper (cf. figures 2 and 6), comprising:

- a) at least one lever 234 mounted on a frame 210 so as to be able to rotate around an axis of rotation and equipped with at least one pressure organ 230, 232 adapted to engaging the connection element (cf. figure 8);
 - b) at least one cylinder-piston group ("hydraulic cylinder") 218 adapted to driving the lever 234 in order to assemble or disassemble the connecting element, said cylinder-piston group 218 comprising a cylinder body and a piston slidably housed within the cylinder body and movable with respect to the cylinder body under the action of pressurised fluid (cf. figures 8 and 9),
 - c) at least a first and a second stop surface cooperating in such a way as to form a stop device for stopping the lever 234 in a defined position with respect to the frame 210 (cf. figures 8 and 9),
 - d) wherein said stop surfaces are formed, one of them on the piston and the other one on the cylinder body of said cylinder-piston group 218 (cf. figures 8 and 9).
- 2.3 Dependent claims 2-23 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty or inventive step (Article 33(2) and (3) PCT). The additional features of these claims are either known from D1 or they involve slight constructional changes in the device of claim 1 which come within the scope of the customary practice followed by persons skilled in the art.
- 3 Furthermore, the present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of independent claim 24 does not involve an inventive step in the sense of Article 33(3) PCT.

- 3.1 Document D1, which is considered to represent the most relevant state of the art, discloses (cf. figures 5 and 7) a cylinder-piston group for a device for the application and/or removal of elements for the connection of a rail to a railway track sleeper according to the combination of features of the first part of claim 24.

The subject-matter of claim 24 is new in view of D1 (Article 33(2) PCT).

The characterising portion of this claim, however, discloses a slight change of the

claimed device, which is obvious for the skilled person and therefore cannot be considered as to be inventive.

- 3.2 The additional features of dependent claim 25 merely involve a slight change of the device of claim 24 and does not either meet the requirements of the PCT with respect to inventive step.

Re Item VII

Certain defects in the international application

Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1 and D2 is not mentioned in the description, nor are these documents identified therein.

A document reflecting the prior art described on pages 2 and 3, is not identified in the description (Rule 5.1(a)(ii) PCT).